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# CANON LAW Is Flexible

*Editor's Note: Leaders of Catholic health care organizations differ from leaders of other-than-Catholic ones in that their work is bound by both civil law and the canon law of the Catholic Church. Because this is so, leaders of Catholic organizations should know something about canon law.*

*Toward this end, Health Progress is offering its readers a series of articles on canon law. These articles, each of which will be the work of a different writer, is under the general editorship of a well-known expert in the field, Fr. Francis G. Morrissey, OMI, PhD, JCD, professor of canon law, Saint Paul University, Ottawa, Ontario.*

## *Is canon law retroactive?*

**A**s a rule, canon law is not retroactive. Rooted in Roman law, the legal principle of nonretroactivity has a long-standing history in both canonical and civil law. Laws generally speak to the present and focus on the future. As

life progresses and evolves, so too does the law that seeks to order it and set direction. New laws result from new perspectives or new situations, as law responds to the needs of the community here and now.



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The principle of nonretroactivity is a matter of justice and common sense. It would be unfair to enact laws and then

apply them to the past. This would jeopardize the very security and stability that law seeks to foster.

Conversely, canon law usually provides

time for those for whom the law is intended to adjust to it. Canon laws that are universal—that is, those that bind everywhere all those for whom they are issued—take force three months after they are promulgated, unless the law indicates otherwise. Particular laws, those established for a diocese or other specific territory, usually bind after one month.

This principle of nonretroactivity is acknowledged in Canon 9 of the Code of Canon Law, which states that “Laws regard the future, not the past . . .” However, the continuation of this canon contains the caveat “unless they [the laws] expressly provide for the past.” Thus, in an exceptional case when the common good demands it, a law may be applied retroactively. This is done only for a grave reason; because it is an exception, the law itself must explicitly state that it is to be applied retroactively. The sparse use of retroactivity usually deals with the granting of favors or rectifying unjust circumstances for which the law has not provided.

## *Is there room for adaptation in canon law to allow for particular situations?*

**A** short response to this question would be an unequivocal yes! However, since most of us approach law with an Anglo-Saxon mindset, a more detailed explanation may be helpful. Unlike our American system of


law, canon law is voluntary and is founded on faith. It is rooted in theology and its goal is the salvation of souls. Canon law is based on Roman law, which has a different spin than our American understanding of law. We who are highly influenced by





## A Shared Statement of Identity For the Catholic Health Ministry

We are the people of Catholic health care, a ministry of the church continuing Jesus' mission of love and healing today. As provider, employer, advocate, citizen—bringing together people of diverse faiths and backgrounds—our ministry is an enduring sign of health care rooted in our belief that every person is a treasure, every life a sacred gift, every human being a unity of body, mind, and spirit.

We work to bring alive the Gospel vision of justice and peace. We answer God's call to foster healing, act with compassion, and promote wellness for all persons and communities, with special attention to our neighbors who are poor, underserved, and most vulnerable. By our service, we strive to transform hurt into hope. 

As the church's ministry of health care, we commit to:

- Promote and Defend Human Dignity
- Attend to the Whole Person
- Care for Poor and Vulnerable Persons
- Promote the Common Good
- Act on Behalf of Justice
- Steward Resources
- Act in Communion with the Church

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# and Adjustable

the spirit of common law often feel that we either obey or break the law. However, one predisposed to a Roman mind-set would, while respecting the law, avoid observing it so literally that it would be unforgiving when applied to a particular case.

Canon law is a means to an end, not the end itself. As such, there is room for adaptation within it. Canon law contains various types of norms. While some of these laws are precepts, taking the form of positive or negative commands or assertions, other canonical norms appear as exhortations, recommendations, or options. By their very nature, these nonprescriptive norms contain flexibility or offer choices.

Much of canon law is universal, that is, applicable to all Catholics everywhere. Legislating for 1.2 billion people across the globe, in a plethora of cultures, with myriad languages and customs, necessitates that law be flexible rather than fixed. However, law is not arbitrary. Canon law facilitates and ensures the ongoing operation of the life of the church. It protects rights and upholds enduring values.

Unique to canon law is the concept of dispensation, the relaxation of an ecclesiastical law in a particular case. This is one of the chief ways in which canon law provides for pastoral adaptation in individual cases. According to Canon 87, when the diocesan bishop judges that a dispensation contributes to the spiritual good of the people, he can dispense from universal or particular disciplinary laws in

## Canon law facilitates and ensures the ongoing operation of the life of the church.

his territory or for those subject to his authority. While divine and natural law cannot be dispensed, there are also some ecclesiastical laws that fit into this category (constitutive laws, i.e., those that regard matters essential to a juridic institute or act, procedural laws, penal laws, and those laws that the Apostolic See has reserved to itself).

Two long-standing canonical traditions that touch on adaptation of law should also be noted: custom and *epikeia*. Canon 27 states that "custom is the best interpreter of laws." Laws are understood and followed within a particular community. Each community approaches the law within its own circumstances and background, causing universal laws at times to be observed with some diversity. *Epikēia* is a virtue associated with justice. It acknowledges that at times a general law could be inadequate when applied to a specific situation. It recognizes that true justice would be achieved by not rigidly applying the law in a particular case.

Thus the longer response is similar to the shorter. There is room for adaptation in canon law!

JOURNAL OF THE CATHOLIC HEALTH ASSOCIATION OF THE UNITED STATES

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